

ESTTA Tracking number: **ESTTA406252**

Filing date: **04/29/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bayer Aktiengesellschaft
Granted to Date of previous extension	06/15/2011
Address	Kaiser-Wilhelm-Allee Leverkusen, 51373 GERMANY

Attorney information	JENNIFER FRASER CONNOLLY BOVE LODGE AND HUTZ LLP PO BOX 2207 WILMINGTON, DE 19899 UNITED STATES trademarks@cblh.com, jfraser@cblh.com, bstaley@cblh.com
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Applicant Information

Application No	85120389	Publication date	02/15/2011
Opposition Filing Date	04/29/2011	Opposition Period Ends	06/15/2011
Applicant	SHANDONG LUBA CHEMICAL CO., LTD. NO.26 SOUTH XIZHOU ROAD LICHENG DISTRICT, JINAN CITY SHANDONG PROVINCE, 250100 CHINA		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Antibacterial pharmaceuticals; Biocides, germicides, bactericides, virucides, fungicides, insecticides, pesticides and herbicides; Germicides; Herbicides; Insect repellents; Insecticides; Preparations for destroying vermin; Preparations for killing weeds; Sterilising preparations; Weed killers for agricultural use
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3560541	Application Date	05/28/2008
Registration Date	01/13/2009	Foreign Priority Date	NONE
Word Mark	LUNA		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 001. First use: Chemicals for use in agriculture; chemicals for use in forestry and horticulture, except fungicides, herbicides, insecticides and parasiticides; chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds; fertilizers</p> <p>Class 005. First use: preparations for killing weeds and destroying vermin, namely, insecticides; herbicides; fungicides</p>

Attachments	77485326#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (11 pages)(329205 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/jf/
Name	JENNIFER FRASER
Date	04/29/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No. 85/120,389	:	
	:	
Filed: August 31, 2010	:	
	:	
For the Mark: LUBA	:	Opposition No. _____
	:	
Published: February 15, 2011	:	
	:	
Bayer Aktiengesellschaft,	:	
	:	
Opposer,	:	
	:	
v.	:	Attorney Docket No.: 1426-1987
	:	
Shandong Luba Chemical Co., Ltd.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Bayer Aktiengesellschaft, an aktiengesellschaft organized under the laws of Germany and having a business address of Kaiser-Wilhelm-Allee, 51373 Leverkusen, Germany, believes that it will be damaged by the registration of the above-identified mark and, having been granted appropriate extensions of time to oppose this application, hereby opposes the same. The required fee for the filing this Notice of Opposition in one class is submitted herewith. If any additional fees are due, please debit Account No. 03-2775.

As grounds for this opposition, it is alleged that:

1. Bayer Aktiengesellschaft, including its related, affiliated, and/or predecessor companies, (collectively referred to as “Bayer” or “Opposer”) has been and now is engaged in the development, manufacture, distribution and sale of, *inter alia*, a variety of chemical and

agricultural products, including without limitation, chemicals used in agriculture, insecticides, pesticides, herbicides and fungicides.

2. Bayer is the owner of U.S. Trademark Registration No. 3,560,541 (the “541 Registration”), which issued on January 13, 2009, for the mark LUNA (“LUNA Mark”) for the goods “chemicals for use in agriculture; chemicals for use in forestry and horticulture, except fungicides, herbicides, insecticides and parasiticides; chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds; fertilizers,” in class 1; and “preparations for killing weeds and destroying vermin, namely, insecticides, herbicides, fungicides,” in class 5 (“Bayer Goods”). This registration is in full force and effect as evidenced by the printout from the electronic database records of the United States Patent and Trademark Office (“PTO”) attached at Exhibit A.

3. Bayer is the owner of U.S. Application Nos. 85/081,681 for LUNA SENSATION; 85/081,675 for LUNA TRANQUILITY; 85/081,666 for LUNA EXPERIENCE; and 85/081,664 for LUNA PRIVILEGE, which were all filed on July 9, 2010, for the goods “preparations for killing weeds and destroying vermin; insecticides, herbicides, fungicides” in class 5.

4. Shandong Luba Chemical Co., Ltd. (“Applicant”), a limited company organized under the laws of China and having a business address of No. 26 South Xizhou Road, Licheng District, Jinan City, Shandong Province 250100, China, filed an intent to use application on August 31, 2010 for the mark “LUBA” (“LUBA Mark”) for the goods, “antibacterial pharmaceuticals; biocides, germicides, bactericides, virucides, fungicides, insecticides, pesticides and herbicides; germicides; herbicides; insect repellents; insecticides; preparations for destroying

vermin; preparations for killing weeds; sterilising preparations; weed killers for agricultural use,” (“LUBA Goods”) in class 5, Application No. 85/120,389 (the “‘389 Application”).

5. On May 28, 2008, before the filing date of the ‘389 Application, Bayer filed the application that matured into the ‘541 Registration.

6. There is no issue of priority. Upon information and belief, Applicant acquired no rights in the LUBA Mark in the United States before Bayer acquired rights in the LUNA Mark.

7. Upon information and belief, Applicant acquired no rights in the LUBA Mark in the United States before August 31, 2010.

8. Applicant has applied to register LUBA for goods in class 5, the same class of goods in which the LUNA Mark is registered. Such goods are identical to, overlapping and/or closely related to the Bayer Goods. On information and belief, the LUBA Goods will be distributed to the same classes of consumers and through the same channels of trade as the Bayer Goods. As applied to such goods, Applicant’s LUBA Mark so resembles the LUNA Mark as to be likely to cause confusion, or to cause mistake, or to deceive as to the source of the goods.

9. Bayer will be damaged by Applicant’s registration of LUBA for the goods identified in the ‘389 Application as a result of the aforementioned confusion, mistake and deception.

WHEREFORE, Opposer prays that this Opposition be sustained, and the registration sought by Applicant be refused.

Respectfully submitted,

Bayer Aktiengesellschaft

Dated: April 29, 2011

By: /s/ Jennifer Fraser
Jennifer Fraser
Christina M. Hillson
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899
302-658-9141
Attorneys for Opposer

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April 2011 a true and correct copy of the foregoing document was caused to be served on the following parties as indicated:

**VIA E-MAIL and U.S. GLOBAL
EXPRESS MAIL**

Wang Zhikun
Shandong Luba Chemical Co., Ltd.
Convention Plaza
3011-12, 30/F, Office Tower
1 Harbour Road
Hong Kong
Info.info168@gmail.com

/s/ Jennifer Fraser
Jennifer Fraser

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-04-28 15:52:22 ET

Serial Number: 77485326 Assignment Information Trademark Document Retrieval

Registration Number: 3560541

Mark

LUNA

(words only): LUNA

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2009-01-13

Filing Date: 2008-05-28

Transformed into a National Application: No

Registration Date: 2009-01-13

Register: Principal

Law Office Assigned: LAW OFFICE 117

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-01-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Bayer Aktiengesellschaft

Address:

Bayer Aktiengesellschaft

Kaiser-Wilhelm-Alee
51373 Leverkusen
Fed Rep Germany
Legal Entity Type: AKTIENGESELLSCHAFT
State or Country Where Organized: Fed Rep Germany
Phone Number: 302-658-9141
Fax Number: 302-658-5614

GOODS AND/OR SERVICES

International Class: 001

Class Status: Active

Chemicals for use in agriculture; chemicals for use in forestry and horticulture, except fungicides, herbicides, insecticides and parasiticides; chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds; fertilizers

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 005

Class Status: Active

preparations for killing weeds and destroying vermin, namely, insecticides; herbicides; fungicides

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Translation: The foreign wording in the mark translates into English as "MOON".

Foreign Registration Number: 302008017595

Foreign Registration Date: 2008-04-28

Country: Fed Rep Germany

Foreign Expiration Date: 2018-03-31

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-20 - Applicant/Correspondence Changes (Non-Responsive) Entered

2009-04-20 - TEAS Change Of Owner Address Received

2009-01-13 - Registered - Principal Register
2008-10-28 - Published for opposition
2008-10-08 - Notice of publication
2008-09-22 - Law Office Publication Review Completed
2008-09-19 - Assigned To LIE
2008-09-11 - Approved for Pub - Principal Register (Initial exam)
2008-09-11 - Examiner's Amendment Entered
2008-09-11 - Notification Of Examiners Amendment E-Mailed
2008-09-11 - EXAMINERS AMENDMENT E-MAILED
2008-09-11 - Examiners Amendment -Written
2008-09-10 - Teas/Email Correspondence Entered
2008-09-10 - Communication received from applicant
2008-09-10 - TEAS Response to Office Action Received
2008-08-01 - Notification Of Non-Final Action E-Mailed
2008-08-01 - Non-final action e-mailed
2008-08-01 - Non-Final Action Written
2008-07-31 - Assigned To Examiner
2008-06-02 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Stanley C. Macel, III, Esq.

Correspondent

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No assignment has been recorded at the USPTO

For Serial Number: 77485326

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.1
Web interface last modified: Apr 30, 2009 v.2.1

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